

CIVIL SERVICE COMMISSION MINUTES

September 5, 2001

A Regular Meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Mary Gwen Brummitt
Gordon Austin
Roy Dixon
Barry I. Newman
Sigrid Pate

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES
September 5, 2001

1:45 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
<u>5,6,8,9,10,16</u>	<u>7,12</u>		<u>15</u>

COMMENTS Motion by Dixon to approve all items not held for discussion; seconded by Pate. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda

A. Commissioner Brummitt: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Ignacio Ochoa**, former Building Maintenance Engineer, Department of General Services, appealing an Order of Suspension and Charges from the Department of General Services.

B. Commissioner Brummitt: Michael McGlinn, Esq., on behalf of **Margaret Katungi**, Protective Services Worker II, appealing an Order of Demotion and Charges by the Health and Human Services Agency (HHSA).

REGULAR AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and it is approved by the President of the Commission.

MINUTES

1. Approval of the Minutes of the regular meeting of July 18, 2001.

Approved.

CONFIRMATION OF ASSIGNMENTS

2. Commissioner Newman: **Michael Rossler**, former Housing Specialist I, Department of Housing and Community Development (DHCD), appealing an Order of Termination and Charges from the DHCD.

Confirmed.

3. Commissioner Austin: Richard Pinckard, Esq., on behalf of **David Schultz**, Deputy Sheriff, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

Confirmed.

4. Commissioner Brummitt: Richard Pinckard, Esq., on behalf of **Marco Carreon**, former Deputy Sheriff, Sheriff's Department, appealing an Order of Termination and Charges from the Sheriff's Department.

Confirmed.

COMPULSORY LEAVE

Findings

5. Commissioner Newman: Bradley Fields, Esq., on behalf of **Kenneth Simon**, Deputy Sheriff, appealing an Order of Compulsory Leave from the Sheriff's Department.

Prior to the Findings and Recommendations being rendered, Bradley Fields, Esq. addressed the Commission. He explained that he was not given Dr. Hoyt's latest medical report before the hearing. This, he explained, was an additional Skelly violation, and could have provided impeachment opportunity.

Robert Faigin, Esq., representing the Sheriff's Department, responded by indicating that nowhere in the County's Compensation Ordinance, Administrative Manual or DHR Policy is there a provision for a pre-hearing for a temporary compulsory medical leave.

FINDINGS AND RECOMMENDATIONS:

Employee has been a deputy in the Sheriff's Department for 15 years. Prior to a November 29, 2000 Order of Pay Step Reduction, Reassignment and Charges and an eventual Order of Compulsory Leave on April 23, 2001, he was an Area Detective at the Valley Center substation. The circumstances that led to discipline and eventual compulsory leave relate primarily to the viewing of pornographic websites on the internet on County time.

Dr. Hoyt, the County's medical evaluator, and Dr. Grossman, Employee's medical evaluator testified at the hearing. Their testimony conflicted in that Dr. Hoyt believed that Employee suffered from an impulse control disorder, whereas Dr. Grossman believed that employee was free from any psychological impairment. Both psychologists appeared to be credible even though the results of their evaluations were different.

The Department placed Employee on administrative assignment. In the past, the Civil Service Commission has informed the Department that there are no provisions in County ordinances, rules, policies and procedures to provide for administrative assignment. County Counsel has deemed that the use of administrative assignment is a gift of public funds. Employee's placement on compulsory leave by the Department was appropriate. The hearing officer does not conclude that it was inappropriate for the Department to discipline Employee and also place him on compulsory leave.

The Department erred in failing to provide Employee with sufficient

notice and opportunity to respond prior to placing him on compulsory leave, similar to a Skelly hearing, which includes (a) notice of the proposed action and the reasons for the action, (b) an opportunity to examine any materials upon which the action is based, to the extent provided by law, and (c) the right to respond to an impartial reviewer. Although Employee was afforded an opportunity to address a Department representative, the Department did not timely furnish Employee with all of his medical records. Consequently, the Department did not satisfy the predetermination conference requirements merely by furnishing all medical records to employee's medical provider. (In the absence of evidence that mental health records present a substantial risk of significant adverse or detrimental consequences to the Employee, all medical records must be furnished upon request by the employee). It is therefore recommended that the Department's determination to place Employee on compulsory leave is affirmed; that the Civil Service Commission determine that the Department erred in failing to provide employee with a complete pre-determination hearing; that Employee is awarded leave time restoration from April 23, 2001 to July 3, 2001; that the Sheriff's Department once again be informed that County Counsel has opined administrative assignment to be a gift of public funds; that the Sheriff's Department be encouraged to request the County to amend language in the Compensation Ordinance regarding administrative leave (not assignment) to accommodate its needs; that the proposed decision shall become effective upon the date of approval by the Civil Service Commission; and that the Commission approve and file this report.

**Motion by Newman to approve Findings and Recommendations;
seconded by Pate. Carried.**

**Dixon -- No. (Commissioner Dixon opposes the restoration of
leave time due to the amount of County hours misused by
Employee.)**

DISCIPLINES

Findings

6. Commissioner Brummitt: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Ignacio Ochoa**, former Building Maintenance Engineer, Department of General Services, appealing an Order of Suspension and Charges from the Department of General Services.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Insubordination; Cause II - Inefficiency; Cause III - Conduct unbecoming an Officer or Employee; and Cause IV - Failure of Good Behavior. Employee has been employed in the Department of General Services for over 10 years. At the time of his suspension, he was a Building Maintenance Engineer. At the hearing, Employee and Department representatives presented opening statements. The Department presented testimony of two witnesses, one of whom was Employee's supervisor at the time of the incident referred to in Cause I, and the other a fellow Building Maintenance Engineer. Their testimony provided direct evidence in support of the charges. Employee's representative cross-examined both witnesses. Thereafter, the hearing officer held a conference with representatives of both the Department and Employee and provided them with her impressions of the evidence produced to that point in the hearing. The Hearing Officer reminded all parties that the Commission has the authority to increase discipline as well as to decrease or affirm discipline. She further

advised that Employee had the option to withdraw his appeal at this time. Subsequently, Employee returned and requested that he be allowed to withdraw his appeal. The Department agreed to this request. It is therefore ordered that Employee's withdrawal of appeal be accepted; that the proposed decision shall become effective upon the date of approval by the Civil Service Commission; and that the Commission read and file this report

Motion by Brummitt to approve Findings and Recommendations; seconded by Pate. Carried.

7. Commissioner Brummitt: Michael McGlinn, Esq., on behalf of **Margaret Katungi**, Protective Services Worker II, appealing an Order of Demotion and Charges by the HHSA.

FINDINGS AND RECOMMENDATIONS:

Continued.

DISCRIMINATION

Findings

8. Commissioner Pate: **Robert Berdell**, former Clinical Social Worker, Sheriff's Department, alleging disability discrimination by the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on June 20, 2001, the Commission appointed Sigrid Pate to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that complainant failed to establish allegations of discrimination based on physical disabilities. Further, probable cause that a violation of discrimination laws occurred was not established. It is therefore recommended that: (1) this complaint be denied; and (2) the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against.

Motion by Pate to approve Findings and Recommendations; seconded by Newman. Carried.

9. Commissioner Dixon: **Tom Basinski**, District Attorney Investigator III, alleging non-job related factor discrimination by the Office of the District Attorney. (See #12 below.)

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on June 6, 2001, the Commission appointed Roy Dixon to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that complainant failed to establish allegations that the Office of the District Attorney engaged in discrimination based on non-job related factors. Further, probable cause that a

violation of discrimination laws occurred was not established. It is therefore recommended that: (1) this complaint be denied; and (2) the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against.

Motion by Dixon to approve Findings and Recommendations; seconded by Newman. Carried.

10. Commissioner Dixon: S.E.I.U. Local 535 on behalf of **Genevieve McGlynn**, former Protective Services Worker I, alleging age discrimination by the HHSA.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on June 20, 2001, the Commission appointed Roy Dixon to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that complainant failed to establish allegations based on age discrimination. Further, probable cause that a violation of discrimination laws occurred was not established. It is therefore recommended that: (1) this complaint be denied; and (2) the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against.

Motion by Dixon to approve Findings and Recommendations; seconded by Newman. Carried.

RECONSIDERATION

11. **Michael Rossler** and **Alvin Williams**, Housing Specialist I's, requesting reconsideration of the Commission's March 7, 2001 decision regarding their selection process complaint against the DHCD.

RECOMMENDATION: Continue until after the resolution of Mr. Rossler's disciplinary appeal. See No. 2 above. (Continued from the April 4th and June 6th, 2001 Commission meetings.)

Continued.

SELECTION PROCESS

Complaints

12. **Tom Basinski**, District Attorney Investigator III, appealing his non-selection for promotion to District Attorney Investigator IV by the Office of the District Attorney. (See #9 above.)

RECOMMENDATION: Continue to the Commission meeting of October 3, 2001 per the request of Mr. Basinski.

Continued.

Findings

13. **Anthony W. Lundy**, appeal of removal of his name by the Department of Human Resources (DHR) from the employment list for Correctional Deputy Sheriff.

14. **Rita Galvan**, appeal of removal of her name by the DHR from the employment list for Corrections Deputy Probation Officer I.

RECOMMENDATION: Ratify item Nos. 13 & 14. Appellants have been successful in the appellate process provided by Civil Service Rule 4.2.2.

Item Nos. 13 and 14 ratified.

INVESTIGATIONS

Complaints

15. Wendell Prude, S.E.I.U. Local 2028, requesting a Civil Service Rule XI investigation regarding alleged violations of Rules IV and XII relating to the selection process and staffing of the Solana Beach shared-use library.

RECOMMENDATION: Accept S.E.I.U.'s request for withdrawal without prejudice.

Withdrawn.

OTHER MATTERS

Suborganizational Layoffs

16. Paul Pfingst, District Attorney, requesting approval for a Suborganizational Layoff within the Bureau of Child Support Enforcement of the Office of the District Attorney.

RECOMMENDATION: Approve request pending input at the September 5, 2001 meeting.

The Commission was addressed at the meeting on behalf of the Office of the District Attorney, District Attorney's Association, County Counsel, and by Carlos Arauz, Director of Human Resources. Several issues were discussed regarding the suborganizational layoff, including legislation, negotiation status, state mandate, pension coverage, appropriateness and timeline of the layoff. After hearing from all representatives present, the Commission voted unanimously on this item.

Motion by Austin to approve staff recommendation; seconded by Dixon. Carried.

Ratification of Medical Provider

17. Ratification of **Ronn Johnson, Ph.D.** as an additional name to the list of approved medical and psychological providers to be used to evaluate POST candidates at the request of the DHR.

RECOMMENDATION: Ratify provider.

Item No. 17 ratified.

Extension of Temporary Appointments

18. Health and Human Services Agency

- A. 1 Residential Care Worker Trainee (Anastacia Hare)
- B. 4 Residential Care Worker I's (Judit Bako, Nida Posadas, Michelle Vertiz, Athena Davis)
- C. 2 Residential Care Worker II's (Cynthia Harris, Virginia King)
- D. 5 Eligibility Technicians (Ethel Barrera, David Humphries, Minh-Yen Nguyen, Georgina Romo, Angela Vilella)
- E. 34 Protective Services Worker I's (Edward Adams III, Nancy Hess, Ayana Downs, Jocelyn Topper, Denise Bahen, Greg Khoth, Mayrna Vasquez, Brian Howley, Felicia Butler, Doreen Chin-Brown, Michael Huser, Arvin Budomo, Esmeralda Villegas, Diana Spencer, Jonathan Lenz, William Bennett, Vanessa Page, Manuel Martinez, Alex Antillon, Bart Rebore, Brian Piepenbrink, Jenny Rush-Buffalohead, Serafin Cabral, Lindsay Cook, Naderia Hartley, Andrea Senior, Krista Burkhart, Kelly Conner, Bethany Schramm, Marty Chumpitaz, Marnie Scivoletti, Rebecca Goulet, Sherry Lytle, Benita Jemison)
- F. 2 Protective Services Worker II's (Clementine James, Nicole Champagne)
- G. 1 Carpenter (Joseph Quijencio)

19. Agriculture, Weights & Measures

- 1 Insect Detection Specialist I (Sharon Belcher)

20. Animal Control

- 1 Principal Administrative Analyst (Vicki Sue Owens)

RECOMMENDATION: Ratify Item Nos. 18 - 20.

Item Nos. 18-20 ratified.

21. Public Input.

ADJOURNMENT: 4:15 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE OCTOBER 3, 2001.